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In re Application of :
STRUMILLO DJACZENKO, Maria et al :
Application No.: 10/048,235 :
PCT No.: PCT/IT00/00309 :
Int. Filing Date: 21 July 2000 : DECISION
Priority Date: 21 July 1999 :
Attorney Docket No.: 6584 :
For: PHARMACEUTICAL COMPOSITION :
FOR TOPICAL APPLICATION, USES :
AND PROCESS FOR ... :

This decision is in response to the papers filed on 28 April 2003.

BACKGROUND

On 26 November 2002, a decision dismissing applicants' petition under 37 CFR 1.42 was mailed. The declaration was regarded as not to contain all of the information required by 37 CFR 1.497(a) and (b). Applicants were given two months to respond with extensions of time available pursuant to 37 CFR 1.136(a).

On 28 April 2003, applicants filed the instant response along with a two-month extension of time request and a \$205.00 check.

DISCUSSION

It is first noted that a three-month extension of time request and a \$465.00 fee is required since the response was received on 28 April 2003 (26 April 2003 was a Saturday) and the prior decision was mailed on 26 November 2002. Accordingly, the \$260.00 difference has been charged to Deposit Account No. 19-0079 as authorized.

The declaration filed on 19 August 2002 was signed by co-inventors, Maria Strumillo Djaczenko and Danila Fava. Maria Strumillo Djaczenko also signed for deceased co-inventor, Wiktor Djaczenko. In the decision dated 26 November 2002, it was indicated that this declaration was regarded as not meeting all the requirements of 37 CFR 1.497(a) and (b) because it was unclear whether the declaration provided the required information for the legal representative (or heiress) and the deceased co-inventor.

Here, counsel argues that the prior declaration complies with 37 CFR 1.497(a) and (b). Counsel claims that the declaration bears the address and citizenship of Maria Strumillo-Djaczenko who signed as co-inventor and as heiress and legal representative of her deceased husband, who was also a co-inventor. Counsel maintains that Wiktor Djaczenko had the same residence, post office address and citizenship as his wife, Maria Strumillo-Djaczenko, which is recorded on the declaration.

Counsel's arguments have been carefully considered and accepted. The confusion resulted from the fact that the residence, mailing address and citizenship of the deceased co-inventor were the same as the legal representative and it was unclear if this information was for Maria Strumillo-Djaczenko, or Wiktor Djaczenko. However, the declaration still does not meet all of the requirements of 37 CFR 1.497

37 CFR 1.497(b)(2) states, in part:

If the person signing the oath or declaration is the legal representative of a deceased inventor, **the oath or declaration shall also state that the person is a legal representative** and the citizenship, residence and mailing address of the legal representative. (Emphasis added).

A review of the declaration submitted on 19 August 2002 reveals no indication that Maria Strumillo-Djaczenko signed as legal representative (or heiress) on the declaration itself as required by 37 CFR 1.497(b)(2). This information must be recorded on the declaration.

It is also noted that a statement should be submitted setting forth that Maria Strumillo-Djaczenko is the sole heir and indicating whether a legal representative has been appointed or is required by the applicable law to be appointed.

CONCLUSION

For the reason noted above, applicants' renewed petition under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants are required to provide an acceptable oath or declaration in compliance with 37 CFR 1.497 within **ONE (1) MONTH** from the mail date of this decision. No extension of time is available.

Failure to properly respond in a timely manner will result in the abandonment of this application.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the

attention of the Office of PCT Legal Administration.



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